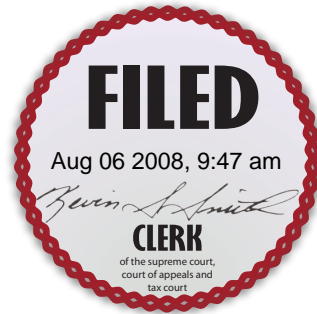


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MARITZA RAMOS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0801-CR-31
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Master Commissioner,
Cause No. 49F10-0612-CM-249880

August 6, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Maritza Ramos appeals her conviction, after a bench trial, of criminal trespass¹ and resisting law enforcement,² class A misdemeanors.

We affirm.

ISSUE

Whether sufficient evidence supports Ramos' convictions.

FACTS

The facts most favorable to the judgment indicate that during December, 2006, Deputy Steven Kaler of the Marion County Sheriff's Department was also employed as a security guard by May Security. May Security had a contract with the Greentree Apartment complex ("Greentree") to provide apartment security. Deputy Kaler wore his Marion County Sheriff's Department uniform, gun, and badge when he performed his duties as a security guard.

On December 6, 2006, at the request of Greentree management, Deputy Kaler delivered Ramos, a former Greentree resident, a trespass notice. Deputy Kaler explained to Ramos that the Greentree management asked that she be removed from the premises and warned not to return or she would be subject to arrest for trespassing. Deputy Kaler informed Ramos that once she was served a trespass notice, she could not enter Greentree's property in order to pick up her children from a babysitter or school and that she would have to pick them up away from Greentree's property or make special

¹ Ind. Code § 35-43-2-2.

² I.C. § 35-44-3-3.

arrangements with Greentree's management. After Deputy Kaler read the trespass notice to Ramos, she signed it.

Deputy Kaler saw Ramos's vehicle on the Greentree property several times in the following two or three weeks. On December 27, 2006, while working as a security guard at Greentree, Deputy Kaler observed a green Ford Explorer run a stop sign. The vehicle stopped at 2323 Tamarack Lane and the driver got out of the vehicle.³ When Deputy Kaler approached the vehicle, he immediately recognized Ramos as she "slid down" in the passenger seat. (Tr. 11).

Deputy Kaler spoke through the driver's side window and asked Ramos to step outside of the vehicle. Ramos refused and locked the passenger side door. Deputy Kaler then opened the driver's door and ordered Ramos to step from the vehicle. Ramos refused again, prompting Deputy Kaler to walk around to the passenger side of the vehicle, knock on the window, and ask Ramos to step from the vehicle. Ramos again refused to get out of the vehicle. Deputy Kaler then clutched his baton and told Ramos to get out of the vehicle, or he would break the window. Ramos ignored Deputy Kaler's request. Deputy Kaler threatened to break the window three times before Ramos finally unlocked the door.

After Ramos unlocked the passenger side door, she remained seated, "stiffened up," and stared forward still refusing to get out of the vehicle. (Tr. 19). Deputy Kaler then took Ramos by her right wrist and forcibly removed her from the vehicle. Once removed from the vehicle, Ramos began yelling, "Call the police!" (Tr. 14). Deputy

³ 2323 Tamarack Lane is located inside the Greentree property.

Kaler informed Ramos that he was the police, and that she needed to put her hands behind her back. Ramos refused to comply and pulled her wrist back, trying to break away from Deputy Kaler's grasp. Deputy Kaler forcibly put Ramos' hands behind her back and placed her in handcuffs. Ramos was charged with criminal trespass, a class A misdemeanor, and resisting law enforcement, a class A misdemeanor.

A bench trial commenced on December 19, 2007. The trial court heard testimony of the foregoing facts. In addition, Ramos testified that on December 27, 2006, she was going to Greentree to pick up her child from the babysitter's apartment. She testified that she complied when Deputy Kaler ordered her to get out of the vehicle; but, she was frightened because she thought he was holding a gun. She further testified that Deputy Kaler had difficulty placing the handcuffs on her because she was wearing a large overcoat similar to a Mexican poncho. Following the bench trial, the trial court found Ramos guilty of criminal trespass and resisting law enforcement, both as class A misdemeanors.

DECISION

Ramos argues that the evidence presented at trial was insufficient to support her convictions. In general:

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable

hypothesis of innocence. The evidence is sufficient if any inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007) (quotations and citations omitted).

1. Criminal Trespass

Ramos argues that the evidence was insufficient to support her conviction for criminal trespass because the State has not shown that she “knowingly” committed trespass. We disagree.

Pursuant to Indiana Code section 35-43-2-2, a person who, not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person’s agent, commits criminal trespass, a class A misdemeanor. For purposes of Indiana Code section 35-43-2-2, a person can be denied entry by means of personal communication, oral or written.

A belief that one has the right to be on the property of another will defeat the mens rea requirement of the criminal trespass statute if there is a fair and reasonable foundation established to support such belief. *Taylor v. State*, 836 N.E.2d 1024, 1028 (Ind. Ct. App. 2005) (citing *Olsen v. State*, 663 N.E.2d 1194, 1196 (Ind. Ct. App. 1996)). The trier of fact determines whether the defendant believed that she had a right to be on the property of another and whether that belief was based upon a fair and reasonable foundation. *Taylor*, 836 N.E.2d at 1028.

Ramos argues that she believed that she had the right to be on the property and that her belief was based upon a fair and reasonable foundation. In support, Ramos testified that she was going to her babysitter's apartment to pick up her children.⁴

However, the trial court heard testimony from Deputy Kaler that he read to Ramos and she signed a trespass notice that informed her that she was prohibited from entering the apartment complex and that doing so would result in her arrest for trespass. He further testified that he informed Ramos that once she was served a trespass notice, she could no longer enter Greentree's property to pick up her children and that she would have to pick them up away from Greentree's property or make special arrangements with Greentree's management. The trial court also heard testimony that Ramos, in trying to avoid being recognized by Deputy Kaler, slid down in her seat as he approached the vehicle.

Ramos's argument that she believed that she had a right to be on the property based upon a fair and reasonable foundation, amounts to an invitation for us to judge her credibility and reweigh the evidence, which we will not do. *Grim v. State*, 797 N.E.2d 825, 830 (Ind. Ct. App. 2003). The trial court is in a better position to weigh evidence, assess the credibility of witnesses, and draw inferences. *Moshenek v. State*, 868 N.E.2d 419, 424 (Ind. 2007) (citing *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004)). The record reveals that the trial court questioned Ramos's credibility as to whether she reasonably believed that she had a right to be on the property.⁵

⁴ Apparently, Ramos's babysitter is a resident at Greentree.

⁵ The trial court stated that Ramos' "angry-scorn filled accountings became more and more clouded" as the trial progressed and that she had "ample reason to lie." (Tr. 41, 42). The trial court also stated that

The evidence is sufficient to allow a reasonable fact-finder to conclude that either Ramos did not believe she had a right to be on the property or that her asserted belief was not based upon a fair and reasonable foundation. We will not second-guess the trial court in this matter.

2. Resisting Law Enforcement

Ramos argues that the evidence was insufficient to support her conviction for resisting law enforcement because the State has not shown that she used forcible resistance. Alternatively, Ramos argues that any resistance that she used was justified because Deputy Kaler used excessive force. We disagree.

Pursuant to Indiana Code section 35-44-3-3, a person who, knowingly or intentionally, forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of his duties as an officer, commits resisting law enforcement, a class A misdemeanor.

a. *Use of Forcible Resistance*

Our supreme court has held that forcible resistance, as contemplated in the foregoing statute, requires more than passive refusal to obey a law enforcement officer's command. *Spangler v. State*, 607 N.E.2d 720, 724 (Ind. 1993). "[O]ne 'forcibly resists' law enforcement when strong, powerful, violent means are used to evade a law enforcement official's rightful exercise of his or her duties." *Id.* at 723. However, forcible resistance does not require outright violence by the defendant. "Clearly our jurisprudence has not read 'violent' to mean that which is thought of in common

Ramos never testified that she believed she had had a right to enter the property to pick up her children. (Tr. 41).

parlance. Were that definition to be applied, only those individuals who commit acts such as striking, kicking, or biting police officers could be guilty of resisting law enforcement.” *Johnson v. State*, 833 N.E.2d 516, 519 (Ind. Ct. App. 2005). Thus, to satisfy the forcible resistance element of resisting law enforcement, the State was required to show only that a defendant applied “some ‘force’ such that the officers had to exert force to counteract [the defendant’s] acts in resistance.” *Id.* at 518 (citing *Guthrie v. State*, 720 N.E.2d 7 (Ind. Ct. App. 1999)).

In the instant action, the evidence most favorable to the judgment comes from the testimony of Deputy Kaler, a law enforcement officer with the Marion County Sheriff’s Department. He testified that he attempted to lawfully engage in the exercise of his duties by arresting Ramos for trespassing. Deputy Kaler first ordered Ramos to get out of the vehicle. Ramos then locked the passenger’s side door of the vehicle and refused to comply. After coming around to the passenger’s side, Deputy Kaler made several threats to break the passenger side window with his baton before Ramos eventually unlocked the door. Once the door was opened, Deputy Kaler made another fruitless request for Ramos to get out of the vehicle. Deputy Kaler then took Ramos by her right wrist and forcibly removed her from the vehicle. Once Ramos was outside of the vehicle, Deputy Kaler informed her again that he was a law enforcement officer, and asked her to put her hands behind her back. At this point, Ramos pulled away from Deputy Kaler and tried to break away from his grasp. Deputy Kaler testified that it took about a full minute to handcuff Ramos; whereas, with a willing participant, it may take around two seconds. (Tr. 18).

Ramos' acts of locking the passenger's side door and pulling away from Deputy Kaler constituted "forcible resistance" as contemplated in Indiana Code section 35-44-3-3(a)(2). When the occupant of a vehicle applies pressure to the vehicle's lock button in order to keep law enforcement agents from effectuating a lawful arrest, that act is a form of forcible resistance. *Bringle v. State*, 745 N.E.2d 821, 827 (Ind. Ct. App. 2001). Further, Ramos exerted physical force by trying to break away from Deputy Kaler's grasp. Deputy Kaler had to use physical force to counteract Ramos's resistance and to maintain the grasp of her wrists before being able to put handcuffs on her. (Tr. 18).

Accordingly, we find the evidence is sufficient to allow a reasonable fact-finder to conclude that Ramos did use forcible resistance against Deputy Kaler.

b. *Excessive Use of Force*

Citizens have the right to resist an officer that has used unconstitutionally excessive force in effecting an arrest. *Shoultz v. State*, 735 N.E.2d 818, 823 (Ind. Ct. App. 2000). Claims that law enforcement officers have used excessive force in the course of an arrest of a free citizen are analyzed under the Fourth Amendment to the United States Constitution and its "reasonableness" standard. *Id.* (citing *Graham v. Connor*, 490 U.S. 386, 395 (U.S. 1989)). Proper application of the Fourth Amendment's "reasonableness" test for an officer's use of force in making an arrest requires careful attention to the facts and circumstances of each particular case. *Shoultz*, 735 N.E.2d at 824. The reasonableness of a particular use of force in making an arrest must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight; however the "reasonableness" inquiry in an excessive force case is

an objective one. The question is whether the officer's actions are objectively reasonable in the light of the facts and circumstances confronting him or her, without regard to their underlying intent or motivation. *Id.*

The facts most favorable to the judgment indicate that after several refusals by Ramos to get out of the vehicle, Deputy Kaler threatened to break the passenger side window with his baton. When Ramos eventually unlocked the door, she still refused to get out of the vehicle. Deputy Kaler then took Ramos's right wrist, forcibly pulled her from the vehicle, and ordered her to place her hands behind her back. Ramos tried to break away from Deputy Kaler's grasp, requiring Deputy Kaler to assert physical force in order to maintain his grip and place her in handcuffs.

Ramos cites *Shoultz* in support or justification for her forcible resistance to the arrest. In *Shoultz*, the law enforcement officer asked the defendant to place his hands against the wall. The defendant did not threaten the officer physically or verbally; however, he refused to comply with his demands and verbally protested the officer's presence on the property. After several warnings, the officer pepper-sprayed the defendant in the eyes and hit him in the back of the leg and head with a fifteen to eighteen inch long metal flashlight. Because the defendant was bleeding profusely from his head, the officer called for an ambulance. Back-up officers arrived on the scene and helped place handcuffs and leg shackles on the defendant. While the defendant was being restrained, he thrashed about on the ground and kicked at least one officer on the shin. Upon being admitted to the hospital, the laceration on the defendant's head required suturing. We found that the defendant's subsequent resistance towards law

enforcement when thrashing around on the ground was justified, due to the excessive force initially used by the police officer against Shoultz. Accordingly, we reversed the defendant's conviction of resisting law enforcement.

This case is distinguishable from *Shoultz*. First, Deputy Kaler was attempting to make a lawful arrest of the defendant. Further, after several requests for the defendant to get out of the car, Deputy Kaler threatened to break the passenger side window with his baton. Subsequently, with Ramos still refusing to get out of the vehicle, he removed her from the vehicle and placed her hands behind her back and in handcuffs. Moreover, the force asserted by Deputy Kaler was primarily that which was reasonably necessary to counteract Ramos' resistance. In the instant case, Deputy Kaler's use of force pales in comparison to that used by the law enforcement officer in *Shoultz*. Furthermore, Ramos does not contend that she sustained any bodily injury due to the force asserted by Deputy Kaler. Therefore, Ramos' reliance on *Shoultz* fails.

Affirmed.

NAJAM, J., and BROWN, J., concur.